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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 327

NICHOLAS MAMULA,

Appellant,

v.

UNITED STEEL WORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DESENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, its officers,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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ARGUMENT

I. The Appellate Jurisdiction of this Court Does Extend to this Action.

Appellees have ignored the cases cited in the Jurisdictional Statement, and the Petition below for reargument.

Appellees apparently misapprehend, misconstrue or refuse to recognize the basic constitutional and legal principles upon which this appeal is premised.

This appeal presumes that the Constitution of the United States and federally enacted laws, and rules implementing same, are the supreme of this land.

The Commerce Clause of the Constitution imposes the nation's confidence in Congress with respect to law and regulation pertinent to activities of our citizens, individually, collectively or corporately engaged therein. National trade unions are such activity (and to a great extent unions themselves brought about this recognition, for the purpose of avoiding more distasteful regional, state or local regulations of their activities).

While this same appellee elsewhere standing on its left foot argues with great vehemence the impropriety, unconstitutionality and illegality of state "right-to-work" laws, as treading upon an area properly preempted by Congress, it here leans on its right foot to urge the pre-eminence of a state rule which flaunts a specific federal statutory enactment.

Appellee's argument in effect says:

1. Section 101(a)(4) enjoins labor unions not to take more than four months to afford final review of a member's grievance, however

2. A labor union may ignore the mandate of Section 101(a)(4) by requiring further appeal steps beyond the four months, or by delaying decision for such time, and

3. Where the only court left open to enforce the member's right is a state court (because the federal courts have ingeniously divested themselves of jurisdiction in

intra-union discipline, however illegal, where office or candidacy "rights" are at issue, construing such important activities as being "political" and beneath the dignity of federal protection, ignoring the Congressional mandate that democracy in unionism is a matter of great public concern); the admittedly illegal provisions of labor union constitutions can be lawfully enforced by state court rules antedating the enactment of L. M. R. D. A.

Such argumentation is less than specious. It is inane; but bespeaks the immensurate and imaginative resourcefulness of appellee's counsel, who thus far have succeeded in so distorting the clear Congressional intent as to completely reverse same. The "key" to union democracy, in their hands, has all but locked the door to bar any democratic movement from entering the union halls.

"The Common Clause, though in terms a delegation of authority to Congress, traditionally has been read, in part, as a self-executing limitation on state activity"; *Southern Pac. Co. v. Arizona*, 325 U. S. 761, 769; *4 Letters and Other Writings of James Madison*, 14-15 (Lippincott ed. 1867); *Vol. 77, Harv. Law Rev.*, 1084, 1089.

The absolute necessity for uniformity of application of federal policy, particularly where, as here, expressly set out in the federal statute, in an area "within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes rather than by local law" calls for a ruling herein; *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U. S. 173, 176; *Greenberg v. Panama Transp. Co.*, 185 F. S. 320, 324 (D. Mass., 1960); 61 Columb. Law Rev. 287 (1961); *Vol. 77 Harv. L. Rev.*, 1084, 1093.

II. A Very Substantial Question is Involved.

The semantic effectiveness of the dogmatic term "frivolous", as applied by Appellees to this appeal is revealing; for implicit in such condemnation is the realization that this appeal poses a threat of the greatest magnitude to the international union's self-anointed, self-perpetuating, anti-democratic oligarchy.

Are we to assume that the Congressional enactment was itself "frivolous"? Only with such assumption can the strained pragmatic logic of the motion to dismiss reflect reason.

Appellee's tender expression of concern for the possible embarrassment to state courts by a judicial determination herein contrary to the vacuous interpretation of this federal law by the state courts of Pennsylvania is simulated at best.

This Honorable Court, in an opinion by Mr. Justice Clark, aptly and cogently dismissed quite similar protestations in *Ker v. California*, 374 U. S. 23, 27:

> "Mapp sounded no death knell for our federalism; rather, it echoed the sentiment of Elkins v. United States, *supra*, at 221, that 'a healthy federalism depends upon the avoidance of needless conflict between state and federal courts' by itself urging that 'federal-state cooperation—under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches."

WHEREFORE, it is respectfully urged that the motion be denied, and the appeal be heard on its merits.

HARRY ALAN SHERMAN,
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